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PACIFIC RAILROAD COMMISSION.

SPEECH

OF

HON. WILLIAM W. RICE,

OF MASSACHUSETTS,

IN THE HOUSE OF REPRESENTATIVES,

Saturday, June 8th, 1878.

WASHINGTON, D. C.:
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1878.

SPEECH.

The House having under consideration the bill (H. R. No. 4399) to establish a Pacific Railroad commission, reported from the Committee on Pacific Railroads by Mr. RICE, of Massachusetts—

Mr. RICE said:

Mr. SPEAKER: During the early part of the session the Committee on the Pacific Railroads listened to an able and elaborate discussion of the intricate and important questions involved in the so-called

PROBATE CONTROVERSY.

The whole legislation of Congress in regard to Pacific Railroads was in this discussion brought under examination. That legislation commenced with an act passed July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean, and to secure to the Government the use of the same for postal, military, and other purposes," and includes no less than fifteen different acts, the last of which, providing for a sinking fund for two of the roads, we have passed at the present session. They relate to no less than seven railroad companies, with a general provision relating to any other railroad companies which may form connections with them. Their provisions are numerous, comprehensive, and minute. They are all framed upon a general scheme, to the development of which they are generally consistently and wisely adapted. They establish between the several companies and their respective roads most intimate and delicate relations.

Appropriating to the construction of these roads a bounty unstinted in liberality, this legislation unites these companies and their roads into a system intended to extend to all, so far as possible, the advantages enjoyed by each, and to promote their common prosperity and their capacity for discharging the services required from them, by conferring upon them mutual rights and privileges, and exacting from them mutual duties and obligations. This system was also intended to promote equally, so far as possible, the interests of the different, and to some extent rival sections of country east of the Mississippi. As might be expected, differences early arose in the management of

these different companies. Abandoned by the Government and left without the control of any central authority, or common arbiter which could maintain them in harmony, they fell under the management of men of great business experience and capacity, generally arbitrary and self-willed, eager to promote and defend their own interests against all the world besides. In the fierce contention and turmoil of rivalry which ensued, the original scheme of the roads was lost sight of. The companies, intimately related in the acts by which they were created and subsidized, have been aliens to each other in their operations. The congenital bonds by which they were united for the common welfare have been sundered. Their stock has been bulled and beared in the city exchanges; now one and now another being the favorite of speculators. The strong lines have crowded the weaker to the wall. The traffic legitimately belonging to one has been diverted to another. States and cities have been deprived of the advantages carefully secured to them by the original legislation, and Territories reduced to the condition of tributary provinces by the very agencies which had been created for their use and convenience. These grievances at last became intolerable. The weaker corporations were unable to maintain themselves. The people of these States and Territories, smarting under the sense of disappointment, found themselves threatened by dangers of oppression and monopoly too great to be longer silently borne. They have invoked to their relief the sovereign power of Congress. They ask that the same authority which created, nourished, and fed these corporations shall be again exercised for their regulation and restraint, so that their original purpose may be at last assured. Although the discussions before the committee were confined to the roads belonging to the Union Pacific system, yet in our deliberations we became satisfied that like evils exist, or may be anticipated, in the operation of all the roads subsidized by the National Government belonging to the several transcontinental systems. The power and duty of Congress to correct these evils extends equally to them all, and we have therefore included all of them in the proposed measure of relief.

THE PACIFIC RAILROADS ENUMERATED.

I introduce here, for convenience of reference, a schedule of those roads, giving their names, dates of congressional grants to them, number of acres granted, their length, terminal points, and the authority incorporating them.

| Name of company. | Date of grant. | Quantity of land granted. | Length of road. | Point of beginning, (town.) | Point of ending, (town.) | Incorporated by, State or Territory. | Remarks. |
|---|---|----------------------------------|------------------|-------------------------------------|--|--------------------------------------|---|
| Central Pacific..... | July 1, 1862, and July 2, 1864. | Acres. 8,000,000 | Miles. 680.3* | *Sacramento, Cal. | Ogden, Utah..... | California. | Construction completed. |
| California and Oregon Oregon and California..... | July 25, 1866..... do..... | 3,000,000..... 3,500,000..... | | *Roseville, Cal.. *Portland..... | Boundary line between California and Oregon. |do..... Oregon..... | In process of construction, and number of miles of entire length not known. |
| Oregon Central..... | May 4, 1870..... | 300,000..... | | *Portland, (west)..... | Astoria, Oreg..... |do..... | Do. |
| Union Pacific..... | July 1, 1762, and July 2, 1864..... | 12,000,000..... | 1,485.83 | *Omaha, Neb..... | Ogden, Utah..... | Congress..... | Construction completed. |
| Kansas Pacific..... | July 1, 1862, July 2, 1864 and March 3, 1869..... | 6,000,000..... | 638.8* | *Kansas City, Mo..... | Denver, Col..... | Kansas..... | Do. |
| Denver Pacific..... | March 3, 1869..... | 1,000,000..... | 106.00 | *Denver, Col..... | Cheyenne, Wyo..... | Colorado..... | Do. |
| Sioux City and Pacific..... | July 2, 1864..... | 45,000..... | 101.77 | *Sioux City, Iowa..... | Fremont, Neb..... | Iowa and Neb..... | Do. |
| Burlington and Missouri in Nebraska. |do..... | 2,441,600..... | 190.73 | *Plattsmouth, Neb..... | To junction with Union Pacific, near Fort Kearney..... | Nebraska..... | Do. |
| Western Pacific..... | July 1, 1862, and July 2, 1864..... | 1,600,100..... | 103.18 | *San Jose, Cal..... | Sacramento, Cal..... | California..... | Do. |
| Central Branch, Union Pacific..... |do..... | 245,166..... | 100.00 | *Atchison, Kan..... | Waterville, Kan..... | Kansas..... | Do. |
| Northern Pacific..... | July 2, 1864..... | 47,000,000..... | | *Duluth, Minn..... | New Tacoma, Wash..... | Congress..... | In process of construction and length of road not known. |
| Atlantic and Pacific..... | July 27, 1866..... | 40,000,000..... | | *Springfield, Mo..... | San Francisco, Cal..... |do..... | Do. |
| Southern Pacific..... |do..... | 5,500,000..... | | *San Jose, Cal..... | To point near Fort Monave, Cal. | California..... | Do. |

* These points are the termini according to the lines of location, except when the roads are completed.

UNION PACIFIC RAILROAD.

Section 1 of the act of 1862 creates the Union Pacific Railroad Company, with authority to build and operate a railroad "from the one hundredth meridian of longitude west from Greenwich between the south margin of the valley of the Republican river and the north margin of the valley of the Platte river, in the Territory of Nebraska, to the western boundary of Nevada Territory." The sections immediately succeeding make the grants of right of way and the subsidies of land and bonds, and prescribe the route of the road, and the terms upon which and the time within which the same shall be constructed. The one hundredth meridian within the limit defined in the first section is about two hundred and forty miles west of the Missouri river. This road is spoken of in different sections of the act, and the acts amendatory thereof, as the main trunk line.

KANSAS PACIFIC RAILROAD.

These matters having been dealt with in the first eight sections of the act, the ninth section authorizes the Leavenworth, Pawnee and Western Railroad Company of Kansas to construct a railroad from the Missouri river, at the mouth of the Kansas, to the aforesaid point, on the one hundredth meridian, and to meet and connect with the trunk at its initial point. This branch is called in the acts sometimes the Kansas and sometimes the Missouri Branch. It would have been about three hundred and ninety miles in length had it been built directly from the mouth of the Kansas to the original initial point of the trunk; but by the ninth section of the act of 1864 any one of the companies mentioned in the acts was "authorized to construct its road westwardly of that point, in case it should deem such westward connection more practicable and desirable."

Under the authority of this provision this company changed its route to a line considerably to the south. In the act of July 3, 1866, it was required to connect with the Union Pacific Railroad at a point not more than fifty miles westwardly from the meridian of Denver. By the act of March 3, 1869, the company was authorized to contract with the Denver Pacific Railway and Telegraph Company for the construction of its line from Denver to Cheyenne by the latter company, and the two were to form a continuous line of railroad from Kansas City, via Denver, to Cheyenne; all the provisions of law for the operation of the Pacific Railroad and its branches being made applicable to both of them. And, again, on the 20th of June, 1874, an act was passed declaring the Denver Pacific to be an extension of the road of the original company. These roads have been built, and are about six hundred and fifty miles in length, and connect with the Union

Pacific Railroad at Cheyenne. The Leavenworth, Pawnee and Western Railroad Company took the name of "The Union Pacific Railway, Eastern Division," by which it is called in the act of 1864, and afterward of "The Kansas Pacific Railway Company," by which it is now known.

CENTRAL PACIFIC RAILROAD.

By the ninth section of the act of 1862, the Central Pacific Railroad Company of California, incorporated by a law of that State, was authorized to construct a railroad from the Pacific coast, at or near San Francisco or the navigable waters of the Sacramento River, to the eastern boundary of California.

By the tenth section of the act the same company was authorized to build its road eastwardly from the eastern boundary of the State until it should meet and connect with the trunk as it in the course of its construction should be built westwardly. Accordingly, it extended its road through California and Nevada to Ogden, in the Territory of Utah, where it made connection with the trunk.

By the act of March 3, 1865, the assignment by that company to the Western Pacific Railroad Company of California of the right to construct the road from San José to Sacramento was ratified and confirmed. Afterward the two companies became consolidated and now form one corporation. Their lines are about eight hundred and eighty miles in length.

THE HANNIBAL AND ST. JOSEPH EXTENSION.

By the thirteenth section of the act of 1862 the Hannibal and St. Joseph Railroad Company, a corporation of the State of Missouri, owning and operating a railroad extending from Hannibal, on the Mississippi river, to St. Joseph, on the Missouri river, was authorized to extend its road from St. Joseph, via. Atchison, so far as to connect with the Kansas branch; and it was authorized, for this purpose, to use any charter granted by the Legislature of Kansas. It procured a charter with the corporate name of the Central Branch of the Union Pacific Railroad Company, and has built its road 100 miles; but by reason of the diversion of the Kansas branch, it has not connected therewith.

THE IOWA BRANCH.

By the fourteenth section of the act the Union Pacific Railroad Company was authorized to build a road from the western boundary of the State of Iowa, at a point to be fixed by the President, to the initial point of the trunk. This road is called in the acts the Iowa branch. It has been built, and forms a direct and continuous line with the trunk from the river to Ogden, a distance of 1,032 miles.

SIoux CITY AND PACIFIC RAILROAD.

In the same section that company was required to construct a road from Sioux city, in the State of Iowa, to some point on the Iowa branch or to the initial point of the trunk.

By the seventeenth section of the act of 1864, the Union Pacific Railroad Company was relieved of the obligation of building the Sioux City branch; and it was provided that it should be built by such company, organized under the laws of Iowa, Minnesota, Dakota, or Nebraska, as the President of the United States should designate for the purpose. He accordingly designated the Sioux City and Pacific Railroad Company, which was incorporated under the laws of the State of Iowa. It has built the road; sixty miles being within the State of Iowa, and forty within the State of Nebraska; and it connects with the Union Pacific Railroad at Fremont.

THE BURLINGTON AND MISSOURI RIVER RAILROAD EXTENSION.

By the eighteenth section of the same act, the Burlington and Missouri River Railroad Company, an Iowa corporation, with a road in process of construction from Burlington, on the Mississippi, to Platts-mouth, on the Missouri river, was authorized to extend its road through Nebraska and connect with the Union Pacific Railroad at a point not farther west than the one hundredth meridian. Subsequently, that company was authorized to assign all its rights, privileges, and franchises to a Nebraska corporation. Afterward a corporation was organized, under the name of the Burlington and Missouri Railroad Company in Nebraska, and it has built its road from Platts-mouth, a distance of 200 miles to Kearney Junction, where it meets and connects with the Union Pacific Railroad. Grants of right of way and of land subsidy were made to the Burlington and Missouri Railroad Company, and all the privileges and immunities granted to the Hannibal and Saint Joseph Railroad Company were conferred upon it.

It will be observed that the acts provide for one main trunk line, beginning on the one hundredth meridian, to be built by the Union Pacific, a Federal corporation, and running west to a connection with the road of the Central Pacific, a State corporation. They also provide for branches at its east end—one the Kansas branch, one the Hannibal and Saint Joseph extension, one the Burlington and Missouri extension, one the Sioux City branch, and one the Iowa branch, all of which are to be built by State companies except the last.

THE CALIFORNIA AND OREGON COMPANIES.

There are many notable features of the Union Pacific Railroad acts demanding attention, but I reserve them for future notice, in order

in this immediate connection to state the provisions of the Federal statutes relating to the other companies mentioned in the second section of the bill. The California and Oregon Railroad Company was organized under an act of the State of California, with authority to build its road from some point to be selected by it on the Central Pacific Railroad, in the Sacramento Valley, to Portland, Oregon. By an act of Congress passed July 25, 1866, a grant of land was made to the company, and by the same act the road was required to be of the same gauge as the Central Pacific, and it was also required to operate its road as one connected continuous line with that of the Central Pacific.

The Oregon and California and Oregon Central Companies are Oregon corporations. Their roads are extensions in that State of the California company, and have been aided by congressional land-grants with the same provisions as that to the California and Oregon Company.

These companies have been consolidated by State legislation with the Central Pacific Railroad Company, and their lines are now in process of construction.

THE DENVER PACIFIC RAILROAD.

The Denver Pacific Railroad and Telegraph Company was incorporated by an act of the Legislature of Colorado for the construction of a road from Denver to Cheyenne, a distance of 106 miles. The provisions of the acts of Congress relating to it have already been sufficiently mentioned.

THE NORTHERN PACIFIC RAILROAD.

The Northern Pacific Railroad Company was incorporated by act of Congress passed July 2, 1864, for the construction of a railroad from Lake Superior to Puget Sound, and is in process of construction.

THE ATLANTIC AND PACIFIC RAILROAD.

The Atlantic and Pacific Railroad Company was incorporated by act of Congress passed on the 27th of July, 1866, with authority to build a railroad from Springfield, in Missouri, upon a route prescribed with considerable particularity, to the Pacific. Authority is given to the Southern Pacific Railroad, a company incorporated under the laws of the State of California, to connect with the Atlantic and Pacific Railroad, and the two are required to have uniform gauge and rates of fare and freight, and to the last-named company a grant of land is made to the same extent as to the Atlantic and Pacific. These roads are now in process of construction.

THE SOUTHERN PACIFIC RAILROAD.

The Southern Pacific has been built from San Francisco to Fort

Yuma, on the eastern boundary of California, and proposes to extend its road eastwardly.

I have now mentioned the provisions of the Federal statutes authorizing the construction of the roads of the several companies mentioned in the second section of the bill, pointed out the origin of their corporate existence, and described the routes upon which they have been or are expected to be built. The controversy which has given immediate occasion for the legislation proposed in this bill is confined to the companies mentioned in the acts relating to the Union Pacific system. I shall, therefore, address what I have to say more particularly to those companies and the provisions of law relating to them. The circumstances do not render it necessary to speak particularly of the other companies and the acts in which they are dealt with.

A SURVEY OF THE ACTS RELATING TO THE UNION PACIFIC SYSTEM.

The original scheme of a line of railroad with several branches provided in the act of 1862, and the acts amendatory thereof, was conceived in a wise and comprehensive spirit, and was developed in numerous and extended details, well adapted to the purposes in view. If in some respects it has disappointed the expectation of its framers, these imperfections are such as are common to all human laws. I desire to draw special attention to two features of this body of legislation. The first is the large power reserved by Congress over these works. Besides the fact, peculiar to the Federal corporation, that the Government should have representation in its board of directors, it was provided in the sixth section of the act of 1862 that the munificent grants of lands and bonds made to all of the companies were "upon the condition that the companies should pay the bonds at maturity and keep their roads and telegraph lines in repair and use, and at all times transmit dispatches over their telegraph lines, and transport the mails, troops, munitions of war, supplies, and public stores upon the railroad for the Government" whenever required to do so. And in the seventeenth section it was provided that if any of the companies should fail to comply with the terms and conditions of the act within a reasonable time, or should not keep their roads in repair and use, Congress might provide therefore, and apply their revenues to reimburse the United States for such expenditures.

Again, the fifth section provides that upon a failure of one of the companies to redeem the Government bonds at their maturity, its road, with all its rights, functions, immunities, and appurtenances, may be taken possession of by the Secretary of the Treasury for the use of the United States. In the fourth and other sections, provision

is made for an examination, approval, and acceptance of the roads by commissioners appointed by the President for the purpose. By the twelfth section, the gauge and maximum grades and curves are prescribed. And in the eighteenth section the power is reserved to Congress, under certain circumstances, to regulate rates of fare, and also to alter, add to, amend, or repeal the act; and the same power is unqualifiedly reserved in the act of 1864. In the twentieth section of the act of 1862 all of the companies are required to make annual reports to the Secretary of the Treasury, showing their condition in great detail. There are in the amendatory acts many other similar provisions. I have thus cursorily reviewed these clauses for the purpose of drawing attention to this patent fact, that Congress designed to assert for itself the power, and also to exercise it, of regulating and controlling the mode and manner of construction of the roads, and especially of securing their maintenance and operation, in furtherance of the original design, at all times thereafter. In this respect this legislation differs widely from previous acts making grants of land to transportation companies. When once the works of those companies were constructed, the power of the Federal Government over them ceased; but in respect to the companies here under consideration, the largest powers are reserved to be exercised in the future in order to secure the great purposes of the acts.

THE SYSTEM OF THE UNION PACIFIC COMPANIES. *

The other feature of this legislation to which I would draw attention is the relation of these companies to each other. They are not separate, distinct works, although built by separate, distinct companies. They are related to each other in a most intimate way. And this appears not from single terms or clauses. All of the provisions of the act look in one direction—namely, to the establishment of a system of roads built upon a uniform plan, and to be operated in harmony. The survey of the acts already presented displays this feature to view. From that survey, it appears that the roads were to consist of one main trunk-line commencing on the hundredth meridian, and of several branches. These words "main trunk-line" and "branches," continually recur.

In this connection the provision prescribing a uniform gauge for all the roads is to be noticed. Section 12, of the act of 1862, provides—

That the track upon the entire length of railroad and branches shall be of uniform width, to be determined by the President of the United States, so that when completed, cars can be run from the Missouri River to the Pacific coast.

The act further, throughout all the sections providing for branches, requires that their tracks shall meet and connect with those of the

other roads. Thus the Leavenworth, Pawnee and Western Railroad Company is, by section 9, authorized to build its road from the Missouri River to the hundredth meridian, where it was to "meet and connect" with the trunk at its initial point. And not only in the act of 1862, but in all the subsequent acts, this requirement that the tracks shall "MEET AND CONNECT" wherever one road forms a junction with another, is reiterated. Thus we have a system of roads consisting of a main trunk-line and several branches, with a uniform gauge and connection of all their tracks, as the act itself says, "So that cars can be run from the Missouri River to the Pacific Ocean." Here we have the important fact of the construction of all the roads, with the mechanical connection of all the tracks.

But, as each road was to be built by its own company, had this been all, the purpose of Congress in establishing this vast and complicated system, might have been defeated by the failure of one to construct its works. Thus, had the Leavenworth, Pawnee and Western Railroad Company failed to build its road, the section of country through which it and its eastern connections run would have been entirely cut off from the system, and thus deprived of the advantages intended to be secured to it. Accordingly, to provide against this, it was provided not only that one company should build its own road, but that in case of the failure of one another company should have the right to enter upon its territory, and build the road and have and enjoy all the rights, privileges, and franchises of the delinquent company. Thus, in the tenth section of the act of 1862, it is provided that the Kansas and California companies, after completing their roads, may unite with the Union Pacific in building both its trunk and its two branches, or so much thereof as should then remain to be constructed, on the same terms and conditions as are provided in the act in relation to the Union Pacific.

So, too, in the same section, the Hannibal and Saint Joseph Company and the Union Pacific are in the same way authorized to build the Kansas branch. So, too, the Union Pacific is authorized to continue the construction of its road into and through California until it should meet the road of the Central Pacific in its progress of construction eastward. And again, the Central Pacific is "authorized to continue the construction of its road through the Territories to the Missouri River on the same terms and conditions as are provided in relation to the Union Pacific, until those two roads should meet and connect, and the whole line of said railroad, branches, and telegraph be completed." But Congress seems not to have been content simply to confer authority upon one company to build the road of another.

Not only was authority given, but the obligation to do so was enforced by a most extraordinary provision. That provision was that a failure to build any one of the roads, either the trunk or the branches, within a time limited, should work a forfeiture to the Government, not only of the rights and works of the defaulting company, but also of all the rights, works, and property of all the others. A provision in that respect will be found in the seventeenth section, and is as follows :

That if said roads are not completed as to form a continuous line of railroad, ready for use, from the Missouri river to the navigable waters of the Sacramento river in California, by the first day of July, eighteen hundred and seventy-six, the whole of all of said railroads before mentioned, and to be constructed under the provisions of this act, together with all their furniture, fixtures, rolling-stock, machine-shops, lands, tenements, hereditaments, and property of every kind and character, shall be forfeited to and taken possession of by the United States.

Nothing could be more significant than this stringent provision of the purpose of Congress to secure the construction of the whole system of roads. It shows the importance which Congress attached to the system as a completed whole.

Other provisions may be mentioned in this immediate connection. As has already been shown, the first eight sections of the act of 1862 relate to the Union Pacific Railroad Company, and the construction by it of the main trunk. In the several succeeding sections the branches are dealt with, and precisely the same rights, privileges, franchises, grants of right of way, lands, and bonds are conferred upon each one of them, and the same duties, obligations, restrictions, and forfeitures are imposed on each one of them, and the same regulations in respect of construction, examination, and acceptance of their several roads are prescribed, and the same large control over all of them is reserved, as are provided in the act in relation to the trunk. The provision in respect to each one of the branch companies is that it shall build its road "upon the same terms and conditions in all respects as are provided in this act in relation to" the main trunk. The trunk was not considered of more importance than any one of the branches, and one branch was not considered of any more importance than another or than the trunk. All were put upon the same footing. Absolute equality was established between them.

Still a further circumstance may be noted here. A single line of railroad running from the Missouri River to the Pacific Ocean might have been authorized, and would have answered certain purposes which Congress had in view. It would have connected the Atlantic States with our Pacific possessions, and opened to settlement and enterprise the vast and unoccupied regions traversed by it. The Government stores, troops, and mails might have been transported with

perhaps sufficient speed and convenience by a single line. Had that been the limit of the purposes of Congress, four out of the five vast subsidies of lands and bonds which were made in aid of the construction of the branches would have been saved. But, instead of providing for the construction of a single line of road, no less than five different lines were, as I have shown, authorized and required to be built. Nearly ten millions of dollars of bonds and as many acres of land were given in aid of the construction of branches over and above what would have been required to secure the construction of a single line. It was with a lavish hand that Congress dispensed the public domain and public treasure to secure the construction of this great transcontinental system of railroad and telegraph. But when the full measure and import of the system is comprehended, the purpose in view is seen to be fully adequate to the vast expenditure.

We are not left in doubt what the object of Congress was in providing for several branches instead of a single line of railroad. We have not far to search in order to discover it clearly set forth in the acts. In the ninth section of the act of 1862, where provision is made for the construction of the Kansas branch, it is required to commence its road "on the Missouri River at the mouth of the Kansas, on the south side thereof, so as to connect with the Pacific Railroad of Missouri." This last-named company had constructed its road from Saint Louis to Sedalia, and was continuing its line to the mouth of the Kansas. The Kansas branch, therefore, was required to connect with it for the purpose of bringing Saint Louis, and the sections of country to the east and south of it, into connection with the Union Pacific system. The next branch was the extension of the Hannibal and Saint Joseph Railroad, which ran across the State of Missouri from Hannibal, on the Mississippi River, nearly opposite the city of Quincy, to Saint Joseph, on the Missouri; and this road was to be brought into connection with the same system. The next branch was the extension of the Burlington and Missouri River Railroad, which ran through Southern Iowa, from Burlington, on the Mississippi, to Plattsburgh, on the Missouri; and this line, too, was to be brought into connection with the system. What is called in the acts the Iowa branch was to be constructed "from a point on the western boundary of Iowa to be fixed by the President of the United States." This point was thus left indefinite because several roads were in process of construction across the State, but their termini on the Missouri River were as yet uncertain. The design was to have the initial point of the Iowa branch fixed where convenient connections could be made by it with these roads, and thus they also form connections

with the system. The branch remaining to be noticed was that starting at Sioux City, to which place from the East roads were not likely to be built at an early day. Accordingly the Union Pacific Company was required to construct that branch "whenever there shall be a line of railroad completed through Minnesota or Iowa to Sioux City." When such lines should be built they, in their order, were to be by means of that branch brought into connection with the system. Thus each branch of the Union Pacific Railroad was to have an eastern connection and to form a link between the several railroads in the States and the main trunk. The design of Congress in establishing these several branches, therefore, was to unite the railroads of the East with the great transcontinental road and to afford and secure to the different sections of the country penetrated and served by those roads, the advantages and facilities which these branches and the whole line afforded.

And now, it is lastly to be observed that to these provisions for the construction and maintenance of the several branches and the trunk was added another, relating to their operation. This was framed with the same care as the others. Without it, the object of providing for the construction of the several roads with uniform gauge and connection of tracks, each running through a separate and distinct section, and with its own eastern connection, would have been defeated. Each, although built to a junction with the others, might be operated separately and even in hostility to them. While it might be physically possible for cars to run over two or more of them from the Missouri River to the Pacific Ocean, the refusal of one might effectually prevent it. It was, therefore, necessary further to prescribe a rule for the operation of the roads after they had been constructed. Such a rule, supplementing the other provisions, gives efficiency and completeness to the great scheme. It is found first in the twelfth section of the act of 1862, where it is provided—

That the whole line of said railroad and telegraph shall be operated for all purposes of communication, travel, and transportation, so far as the public and Government are concerned, as one connected and continuous line.

The same provision is repeated again in Section 15 of the act of 1864, and to it is added the further clause—

And in such operation and use, to afford and secure to each equal advantages and facilities as to rates, time, and transportation, without any discrimination of any kind in favor of the road or business of any or either of said companies, or adverse to the road or business of any or either of the others.

This comprehensive and exact rule of operation assures the success of the scheme. Its meaning is not doubtful, at least, to a certain extent. One company was to operate its road not solely in its own in-

terest, but in close connection with each and all of the others, so far as was possible. It was not so to conduct its own business as to reserve to itself any preference or advantage over the business of any other company. It was to so run its trains as to make proper connections with the other roads. It was to afford to them proper terminal facilities. It was so to apportion its rates of freight and fare as to put them on a footing of perfect equality.

For instance, the Kansas branch connect with the Union Pacific at Cheyenne. Traffic originating on that branch, and destined for points on the line of the Union Pacific west of Cheyenne, was to be treated by the latter company at that point as it treated that originating on its own line east and destined west of that point. On the other hand, it was made the duty of the Kansas branch to receive the traffic originating on the line of the Union Pacific, and destined to points on its own line just as it treated its own. It could not shut itself off from the Union Pacific by fixing its time-tables or its rates for freight or fare, or its terminal facilities, so as to monopolize the business originating on its own road. Very much as any one of the great corporations of the country having a trunk and branches—as, for instance, the Pennsylvania Central or the New York Central—operates all parts of its system in harmony, so must all of these companies operate all their roads together. Such was the scheme of the acts relating to this system of roads.

And it has been extended still further. I have already stated that the California and Oregon, Oregon and California, and Oregon Central Railroad Companies, which connect with the Central Pacific, have been consolidated with that company. The acts granting lands in aid of their construction, passed July 25, 1866, (14 Statutes at Large, 241,) require them to be built with a uniform gauge with the Central Pacific, and contain precisely the same rule of operation prohibiting discrimination as is found in the act of 1864. By virtue of this provision and the fact of their consolidation with one of the companies named in the Pacific Railroad acts, they, too, are made members of the same system. For that reason they are brought within the provisions of this bill. The other companies mentioned in the bill, excepting the Southern Pacific, are included within its provisions because they have been incorporated by acts of Congress with large powers of control reserved therein. The Southern Pacific, by the terms of the act making a grant of land to it, is brought into the same relations with the Atlantic and Pacific as the Oregon companies sustained to the Central Pacific, and is subjected to the same congressional authority.

But the acts which we have had under review, while associating the several companies together and uniting them in one family by congenital bonds, establish over them no supervisory authority to constrain their obedience to the rule prescribed for their operation. A law was made for their government, but was without sanction or mode of enforcement. Their relations were not only of a most important and intimate, but also of a very delicate nature, which might easily be thrown out of harmony. Each being governed by considerations of its own self-interest would be likely to construe the provisions of the acts so as to advance those interests. Such has been the result, as was shown in the discussions before the committee. While the counsel of the Union Pacific Company on the one side insisted that the legislation of Congress justified that company in maintaining a monopoly of the transcontinental business, the counsel for the branch companies, on the other side, insisted that the acts should have such construction as would practically enable them to absorb the entire business and become swollen into undue proportions by sucking the life blood of the principal road. The equality for which they contended in their own behalf could only result in inequality to the trunk. The facilities and advantages which they claim for their own traffic could result in inconvenience and disadvantage to the traffic on the main line. Maintaining that the provisions of the law secured equal advantages and facilities for all and prohibited either favorable or adverse discrimination toward any, they required an apportionment of rates between them and the Union Pacific, based on the single consideration of distance traversed. These extreme claims made upon the one side and the others, as we are bound to believe with sincerity and candor, only show more clearly the necessity of creating some common arbiter for adjusting the differences necessarily arising between several companies so related and situated.

HOW THE ACTS HAVE FAILED TO ACCOMPLISH THEIR PURPOSES.

In the discussion before the committee it was not denied on either side that the branches were not operated with the trunk as one connected, continuous line. Discriminations by the Union Pacific against the branches, and by the Kansas and Denver Pacific against the Union Pacific, were freely admitted. Criminations and recriminations, excuses and apologies were freely indulged in; but the ultimate fact was admitted on all sides. In the operation of the trunk and the Iowa branch, both built by the Union Pacific, they form a single line; as much as if the original act had provided for one main road commencing on the Missouri River and running west to a connection with the California company. The junction on the hundredth meridian is

an inappreciable point. No station or town is there. No other road connects there. Trains passing either way do not stop there.

It will be remembered that the Sioux City branch connects with the Union Pacific at Fremont, 40 miles west of the river; the Burlington and Missouri branch at Kearney Junction, 200 miles west of the river; and the Kansas branch at Cheyenne, 516 miles west of the river. A table of rates for freight on the Union Pacific was produced before the committee and attention specially called to it. Its authenticity was not denied, nor was it claimed that any change had been made from it. This table shows that Omaha rates are charged for freight coming on to the Union Pacific at Fremont, Kearney Junction, and Cheyenne, the three points at which the branches connect with the Union Pacific. No allowance whatever is made for the distances of those places from Omaha. This system of charges necessarily excludes the branches from all through business, and deprives the sections traversed by them of the advantages to which they are entitled under the law.

HOW SHALL THESE EVILS BE REMEDIED?

The question now arises, what remedy can be devised and should be applied to correct these evils? This bill does not propose to deal with the rights of these companies in any respect. It takes them as established in the acts of 1862 and 1864, and simply proposes by an act which is merely remedial in its character to provide a method of enforcing them. The question is left untouched by this bill as to the proportions in which the rates charged by the several companies for their common business shall be divided between them—whether, as has been claimed on the one side, upon the basis of mileage prorate, or, as claimed by the other side, upon the basis of a number of other material considerations securing equitable prorate. It is not proposed to regulate the times or the speed of trains or business connections of different roads, or prescribe the terminal facilities which one should provide for another or the compensations which should be paid for them. All these matters are left to be dealt with by those specially skilled in them. The bill provides simply for a commission composed of persons specially fitted by their previous experience to deal with such matters, aided by constant observation of the operation of rules which may be prescribed by them, and of the current business of the companies. I propose now to show as briefly as I am able why such a remedial act is better fitted to meet the necessities of the case than any attempt to do so either by legislation or judicial action.

Railroad property is of a peculiar character, and requires, as it has received, peculiar legislation by the Government. It touches every

industrial interest, agricultural, commercial, and manufacturing, at every point. The very circumstance that it requires the concentration of large capital in single hands, and especially that it may influence, favorably or unfavorably, the prosperity of the communities which it should serve, calls for special administrative regulation. The farmer in the extreme West may labor through the season for the production of his crops, and yet the price which he receives for their product is not simply a fair return for his own labor and investment, but is largely affected by what may be charged to him for its transportation from his fields to market. He may labor never so industriously; he may live never so economically; he may plan never so wisely; he may reap never so largely; and yet the railroad by which he reaches the market may, by changing its line, or station, or rates, vastly increase what he shall realize, or, on the other hand, entirely deprive him of all compensation for his labor. The manufacturer, carefully selecting the location of his enterprise, with the view of conveniently, quickly, and cheaply reaching the market with his wares, may be suddenly deprived of all the advantages which he expected from his situation, by the increase of the charges which are made against him for transportation by the railroad upon which he calculated and depends. Men are made rich and made poor, communities grow and decline, as it suits the policy of the managers of railroads.

To this vast power is added also their control over the large number of persons in their employ and dependent upon them, who naturally receive from those who hold in their hands their daily bread, to a very large extent, their opinions, prejudices, inclinations, desires. No other department of business and industry in the country has such reach and such force as the railroads. Uncontrolled by a superior power which shall regard alike the interests of all, protecting, and at the same time restraining the company, and especially guarding the individual and the public, the railroad interest may absorb all others, overreach all others, dominate all others, subjugate all others. Public liberty as well as private rights may become endangered by it. We have recently seen spasmodic efforts made to control these difficulties—efforts prompted by a just sense of wrong, but abortive to a large degree because not wisely directed. Considerate men have seen and thoroughly appreciated the dangers flowing from an unrestrained railroad management, and on the other side from the popular indignation which mismanagement always arouses, and they have suggested different schemes by which these evils may be overcome, and to a degree have been modified. In many instances these attempts have been made by means of legislative enactments. Precise and inflexible

rules have been thus prescribed to which all conditions have been compelled to bend.

THE REMEDY NOT TO BE FOUND IN LEGISLATION.

Statutes must be general in the rules which they prescribe and inflexible in their operation. They can provide only for such circumstances and exigencies as have occurred; they cannot anticipate such as experience has not developed. They must be positive, exact, inflexible. But the relations of railroads one to another, to the public, and the Government change with every day in the year. The construction of new lines creates unexpected competition; the development of a new industry furnishes a suddenly increased volume of business; discovery and inventions change the expense of operation. The large crops of one year demanding increased facilities, the short crops of another year making such provision unnecessary; the large volume of business of one season and the small volume of business of another season; a foreign or a domestic war; the erection or the destruction of a manufactory, and a thousand other circumstances keep railroad property in a state of constant fluctuation. The rule which should govern it in one year or at one season is not the rule which should govern it in another year or at another season. Just and fair charges for the transportation of freight and passengers cannot be prescribed, except as many circumstances, almost daily changing, are considered.

These obvious and familiar facts are quite sufficient to show how unfit the legislature is to deal with this subject. Its members may be never so wise, never so patriotic, never so anxious to do justice on the one hand to the companies and on the other hand to the public, and yet, by reason of the very nature of legislation itself, its general character, and its inflexibility, they are unfit to deal with this subject. The attempt has been made in many States, and has failed—failed, too, after bringing upon all parties the greatest mischief. This is notably true of the Legislature of Iowa. A few years ago a railroad act was passed in that State which undertook to deal upon an arbitrary rule with railroad charges. The effect was to put a stop to railroad construction and throw many companies into bankruptcy and seriously retard the development of the State. Instructed by this experience the Legislature of that State has recently repealed many of the provisions of law which it had enacted after mature discussion and deliberation, and in the expectation of assuring the public interests.

The relations of railroad companies to each other are especially delicate and variable. They are affected by cost of construction and

cost of maintenance ; cost of operation, volume of traffic, distance transported, character of freight, speed, and skill in management. They are affected further by lines of water transportation, in many cases distant from them ; by the formation of competitive lines, by terminal facilities on their own lines, on connecting lines, and on the seaboard. These relations must be dealt with by persons who have devoted to their consideration much reflection, who are aided by large experience, and who are guided by the advantages of constant observation. The charge of them must, therefore, from the very nature of the circumstances, be committed to boards of control created either by themselves or by the Government. Such boards have been erected in many different States, with larger or more restricted powers, and with greater or less public advantage.

THE REMEDY NOT TO BE FOUND IN THE COURTS.

Nor do the ordinary processes of the courts of justice furnish an adequate remedy. The judicial tribunals administer the law as it has been prescribed. Their discretion may be exercised only within narrow limits. It not unfrequently happens that judges find themselves constrained by technical rules of law to disregard the particular circumstances of the case, and what may seem the very right of the matter. Dealing only with cases which have occurred in past experience and bound by precedent to a further application of what has been decided, they are not able to frame their judgments with such flexibility as is necessary adequately to deal with the variable character of the relations of railroad companies to one another and the public. It is of the very essence of judicial judgments and decrees of courts, as well of equity as of law, to conclude the controversy by a final determination. From such a judicial conclusion, railroad companies are able readily to escape by some slight change of circumstances.

Thus case after case may arise and be disposed of without reaching any decisive and comprehensive conclusion. And, besides all this, litigation in the courts may be so greatly protracted that an evil complained of may become securely entrenched before a remedy can be administered. The law of judicial procedure is full of dilatory and interlocutory applications, which not unfrequently defeat final judgment, and so delay progress to it that " the law's delay " has become proverbial. The evil is the greater in controversies of the sort to be dealt with by the proposed commission, because they involve not so much private as public interests. While the cause is pending in the courts the public and the Government must stand awaiting the judgment, their rights in abeyance, their interests sacrificed.

The proposed commission will be able to deal summarily with the

questions and parties brought before it. The course of procedure being special must necessarily be simple. The members will be informed by the testimony of witnesses, the allegation of parties, and the arguments of counsel. The party aggrieved and the party complained of will each have his day in court. But the subject of inquiry will always be the very right of the matter; and to its determination the commissioners will bring an intelligent experience, and above all a personal observation. They will therefore be enabled to reach an early conclusion.

I am assured of this by my own experience. It happened recently that I was of counsel for a company which was a party to a controversy with another in respect to their occupancy of a union depot, and the use of common terminal facilities and the apportionment of compensation in respect thereof.

The dispute was brought before the commissioners of railways in Massachusetts. The hearing was promptly had. A short time was sufficient for the examination of the matter, the argument of counsel, the personal observation of the circumstances, and the final decision. That decision was accepted by both parties as on the whole fair and just, and was readily acquiesced in. I may be pardoned this personal reference because it furnishes an apt illustration of the operation of the methods proposed in this bill for the adjustment of the differences which this commission will be called upon to settle.

SURVEY OF LEGISLATION PROVIDING FOR RAILROAD COMMISSIONERS.

The subject of railway regulation received attention in the Parliament of Great Britain at an early day. As early as 1839 a select committee on railways appointed by the House of Commons expressed a strong opinion that a board would be required to superintend railways, "for the purpose of protecting the weak against the strong and counteracting the evils incident to monopoly." At several succeeding sessions carefully drawn and voluminous reports were presented to the Commons by their select committees. Jurisdiction over the subject was vested in the Board of Trade.

In 1873 (36 and 37 Vict., ch. 48) a board of railway commissioners was created with very large powers of supervision and control over the railways of the kingdom, and the powers of the Board of Trade were transferred to it. Among other things, the commissioners have jurisdiction to examine and approve or disapprove of agreements between two or more companies for the joint management of their railways; to regulate the gauge of roads; to sanction changes of route; to inspect and authorize the opening of new roads; to determine differences between two or more companies having a common terminus,

or a portion of the same line of rails in common, or which form separate portions of one continuous line; and also to hear and decide, with all the powers of a court of justice, disputes between different companies and between any individual and one company arising under the act prohibiting discrimination. They are also vested with authority to make general rules not only to regulate the proceedings before them, but also any other matters submitted to their jurisdiction. This body has more than answered all expectations, and its decisions, which, except when subject to appeal to the superior courts, have the force of law, are contained in a separate series of reports.

This matter received attention in the Legislature of Massachusetts in 1865, and in the following year an elaborate report was made to it, written by Judge Redfield. It was the subject of great consideration at each session of the Legislature until July 15, 1869, (Supplement to General Statutes, chapter 408,) when the law, which had been introduced at several previous sessions, was, without material change, enacted. It establishes a board of three commissioners, to hold office for three years, who shall have general supervision over all railroads within the State. To a very large extent the powers of the board are those merely of examination and advice; the chief sanction attached to their orders being a report to the Legislature and the apprehension of legislative interference. At an early day jurisdiction was vested in the supreme court to fix the route of railways through cities and towns in case of differences between the municipal authorities and directors, and also determine what compensation shall be paid by one company for the use of the road of another when it has running powers over the same, and also for terminal facilities, and the extent thereof, whenever differences arise between several companies on these points. These powers are transferred to the permanent commissioners, and their decision in these respects is binding, unless modified or reversed by the supreme court.

In California, an act was passed April 3, 1876, creating a board of three commissioners of transportation. It vests in the board much larger powers of supervision and control than the Massachusetts law. It is to hear and determine differences between companies which form parts of a continuous line in respect of the apportionment of their rates, the arrangement of their time-tables so as to form close connections, the terminal and other facilities and accommodations to be furnished by one company to another, and the compensation to be paid therefor, and their decision is carried into execution through the processes of the court, and is final unless modified or reversed by the supreme court. The most stringent provision is made against dis-

crimination. In many of the other States similar boards have from time to time been created with more or less authority and with more or less public advantage. Among others may be mentioned New York, Connecticut, Illinois, Missouri, Wisconsin, Michigan, and Iowa.

The advantages which have been derived from the efforts and labor of these commissioners have been greater or less, not so much according to the proportion of authority vested in them as the wisdom with which they have administered their functions. The simple power of advice of the commission of one State has sometimes exceeded the power of conclusive judgment vested in the commission of another State. A judicial temper directed and animated by an intelligent experience, and aided by a constant observation, is the first and great pre-requisite in the constitution of a useful commission. Removed from political predilections and elevated above influences from or against the companies with which it has to deal, it is likely, whatever its powers, to accomplish great good. Beneficent results may be reached at once, but the full measure of usefulness can only be attained after protracted experience, intelligent observation, and judicious administration have developed a full appreciation of what is necessary and what should be forborne.

Against the scheme of this bill some objections of a constitutional character have been urged, which I now propose to examine.

CONSTITUTIONAL OBJECTIONS TO A BOARD OF COMMISSIONERS.

This bill vests in a board of commissioners the power to make regulations to govern the operation and management of the roads mentioned in the second section. The question of the constitutional competency of Congress to vest such power in a subordinate tribunal may be raised. But it may be justified by the long and continued course of legislation in respect to other departments and administrative officers of the Government. For instance, in 1820 the Secretary of the Treasury was directed to make and issue, from time to time, such instructions and regulations to the several collectors, receivers, depositaries, and other officers receiving the public funds as he should deem best calculated to promote the public interests. And in 1864 he was required to prescribe rules and regulations to be used under and in execution and enforcement of the various provisions of the internal revenue laws. In 1828 he was required to establish such regulations as the President should think proper in relation to the collection of customs. And by many other acts like power was vested in him in respect of other matters committed to his administration.

Under the authority thus conferred on the Secretary, voluminous and numerous rules and regulations have been prescribed by him for

the conduct of the business of his Department. The same is equally true of every one of the other great departments of the Government. Descending from the Cabinet officers to their subordinates, we find similar powers conferred upon them. Thus, in 1866, the Commissioner of the General Land Office, under the direction of the Secretary of the Interior, was authorized to frame appropriate regulations for enforcing and carrying into effect the laws relating to the public lands. And the Commissioner of Indian Affairs was, in 1834, authorized to prescribe regulations for carrying into effect the various provisions of law relating to the subjects committed to him. And in 1872 the Commissioner of Internal Revenue was, under the direction of the Secretary of the Treasury, required to prescribe regulations for the returns to be made by individuals for the purposes of taxation.

A very interesting instance, worthy of especial notice, is that of steamboat inspectors. The laws relating to them were of early origin and were digested in 1871. They provide for a supervising inspector-general and ten supervising inspectors, who should assemble as a board once a year in this city, and establish all necessary regulations required to carry out, in the most effective manner, the provisions of the act. And it was specially provided that these regulations, when approved by the Secretary of the Treasury, should have the force of law.

The act further provided for local inspectors. Under the authority thus conferred, rules and regulations have been prescribed for the inspection and license of vessels not only navigating the high seas, but also the great rivers and inland lakes. The characteristics of our inland waters differ in many respects, so that rules proper for regulating the navigation of one are inapplicable to another, and separate sets have accordingly been necessary. Each has been made with great care and minuteness by the board, and as its members are men of experience in the navigation of different rivers, lakes, and seas, they have been able to frame their rules and regulations with great aptness. The board, also, by its rules, provides for the examination of captains, pilots, and engineers, and any one guilty of a violation of any one of these rules may be summoned before an inspector, put upon his trial, and if found guilty punished by a forfeiture of his license.

Other similar boards have from time to time been created with the same power to prescribe rules and regulations in respect of the matters committed to their administration. The powers conferred by this bill upon the board of railroad commissioners to prescribe rules and regulations for the government of the roads mentioned in the second section is not of broader or different character.

I am not aware that the power of Congress to vest such authority in subordinate tribunals and administrative officers has ever been questioned or made the subject of discussion. This feature of the bill is sufficiently vindicated by the long and uniform course of similar legislation which I have very briefly referred to.

Passing now from the question of the power of Congress to vest in the board proposed to be created, authority to prescribe rules and regulations, which may be called its legislative functions, I come to the consideration of the provision vesting in it jurisdiction to inquire into and determine differences between the companies, which may be called its judicial function. It is to be observed, in this connection, that the decision which the board may make upon any matters of dispute is not final. The company decided against may take upon itself the responsibility of refusing to obey the decision, and the burden is then cast upon the party aggrieved thereby, or the commission, of applying to the courts for the proper judicial process to compel obedience. The judicial power is confined to the simple matter of preliminary inquiry. A much larger power of judicial determination has from time to time been vested in special tribunals. An instance is that of the inquiry, trial, and determination by steamboat inspectors for offenses against their rules and regulations for the navigation of steam-vessels; their decisions are final, and may be followed by the severe punishment of excluding the offender from the prosecution of his legitimate business.

Another instance worthy of special notice is that of registers and receivers of the land offices. Persons entitled to make pre-emption of the public lands must possess certain qualifications and perform certain prescribed acts. In the act of September 4, 1841, which confers the right of pre-emption, it is provided that all questions as to the right arising between different settlers upon the same tract shall be determined by the register and receiver of the district within which the land is situated.

In 1858 it was provided that appeals should lie from their decisions to the Commissioner of the General Land Office, and his decision was made final unless a further appeal were taken to the Secretary of the Interior. These provisions of the statute were simply re-enactments of similar provisions in former acts and of the general course of procedure in the land department. The question early arose, what was the force and effect of decisions of the register and receiver or of their superior officers upon appeal?

Wilcox vs. Jackson (13 Peters, 498) is the leading case on this subject. It was there held that the registers and receivers were a special

tribunal, and that their decisions upon matters within their jurisdiction were final and conclusive, but upon matters without their jurisdiction their decisions were void; that is to say, the same rule which is familiar to all lawyers in respect of the conclusive effect of the judgments of courts of limited jurisdiction applies to the decisions of the land officers. The question has been agitated in different forms in many cases since. The recent case of *Johnson vs. Towsley* (13 Wallace, 72) was elaborately argued by counsel, and maturely considered by the court. Every objection which could be taken against regarding the decision of the land officers as conclusive was urged, but neither in that case nor in others which have been before the court has it been claimed that it was not competent for Congress to confer upon the land officers the power of judicial inquiry and determination, and even to make their decisions final upon questions of fact when both parties had opportunity to be heard, and fraud did not intervene in the inquiry.

Another case may be mentioned, because it was also the subject of elaborate examination in the Supreme Court. As early as 1820 an act was passed providing that if a public officer charged with public funds should not duly render account therefor, the First Comptroller of the Treasury should state the account and certify it to the Solicitor of the Treasury. That officer was required to issue his warrant to the marshal of the district within which the delinquent lives, commanding him to make the moneys out of the goods and chattels, lands and tenements of the defaulter by levy and sale thereof. In *Murry's Lessee vs. Hoboken Improvement Company*, (18 Howard, 31,) the question was raised whether it was competent for Congress to confer on the Comptroller and Solicitor power to issue such writ; on the ground that in doing so they necessarily exercised judicial functions. That subject was elaborately discussed by Mr. Justice Curtis, delivering the judgment of the court. He said:

It is evident that the Comptroller must, in determining whether the warrant should issue, pass upon precisely the same questions which would be submitted to a court in an action brought by the Government against the officers.

It was admitted that this was an exercise of judicial power by an administrative officer, but it was also held entirely competent for Congress to vest such power in such officers. This case, and the other instances which I have cited, go far beyond the bill under consideration. They put the determination of the officer or tribunal upon the high ground of judicial judgments. The decisions and orders of the board proposed to be created by this bill are not definitive, and cannot even be enforced except by the aid of a judicial process, and that

process, too, must be invoked not by the delinquent in order to protect himself, but by the party aggrieved by his disobedience or the commission. This bill is not, then, obnoxious to any objection on the ground that it confers upon the board of commissioners either legislative or judicial powers.

POWER OF CONGRESS OVER THE STATE RAILROAD CORPORATIONS.

The relations of the several companies named in the second section of the act to the Federal and State governments, furnish an interesting subject for our consideration. One, the Union Pacific Railroad Company, as has already been stated, is a Federal corporation, and was created by Congress when the whole of the regions through which it runs was territory of the United States, not within the limits of any one of the States of the Union; but each of the branches, as has also been explained, was built by a State corporation. What, then, is the power of Congress to regulate and control these several corporations, as well those created by itself as those created by the States? I invite attention in the first place to the objects Congress had in view in these enactments. They are declared in the acts with a reiteration evincing singular solicitude to impress them upon this legislation. The act is entitled, not an act to incorporate the Union Pacific Railroad Company, nor an act merely making grants of lands or bonds in aid of a railroad. The title is most peculiar in its character. It is "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes."

In the third section, where the grant of land is made, the same thing is again stated. It runs thus:

That there be and is hereby granted to the said company, for the purpose of aiding in the construction of said railroad and telegraph-line, and to secure the speedy and safe transportation of the mails, troops, munitions of war, and public stores thereon, every alternate section of public land, &c.

Turn to section 4 and we see that the title to this land passes from the Government only when this object is secured:

That whenever said company shall have completed forty consecutive miles of said railroad and telegraph line ready for the service contemplated by this act, and supplied it with all necessary drains, culverts, viaducts, crossings, &c.

Then the patents are to issue.

Again, in the sixth section of the act, the condition is annexed to the grants—

That the grants aforesaid are made upon condition that said company shall pay said bonds at maturity, and shall keep said railroad and telegraph line in repair and use, and shall at all times transmit dispatches over said telegraph line, and transport mails, troops, and munitions of war, supplies, and public stores, upon said railroad,

for the Government, whenever required to do so by any department thereof, and that the Government shall, at all times, have the preference in the use of the same for all the purposes aforesaid.

In the eighteenth section the object of these acts is repeated in short and definite words. The clause reads thus :

And the better to accomplish the object of this act, namely, to promote the public interest and welfare by the construction of said railroad and telegraph line, and keeping the same in working order, and to secure to the Government at all times (but particularly in time of war) the use and benefits of the same for postal, military, and other purposes, Congress may, at any time, having due regard for the rights of said companies named herein, add to, alter, amend, or repeal this act.

These purposes thus carefully expressed in the act itself clearly show that Congress intended to create a corporation which should be an agency of the Government for the performance of certain of its most important functions. This has been distinctly stated by the Supreme Court in the case of the Union Pacific Railroad Company *vs.* Peniston, 18 Wallace, 31. Mr. Justice Strong, speaking for the court, after mentioning several important provisions of the act, says :

They all look to a purpose of Congress to secure an agency competent and under obligation to perform certain offices for the General Government.

And again, in the case of the United States *vs.* The Union Pacific Railroad Company, (1 Otto, 72,) Mr. Justice Davis, speaking of the construction of the road, says :

This enterprise was viewed as a national undertaking for national purposes.

And in another part of the opinion he says :

The whole act contains unmistakable evidence that if Congress was put to the necessity of accomplishing a great public enterprise through the instrumentality of private corporations, it took care there should be no misunderstanding about the objects to be accomplished or the motives which influenced its course of action.

These brief extracts from the statutes and the opinions of the court are sufficient without any extended examination to show that Congress intended to and did create the Union Pacific Railroad Company to be an agency of the General Government.

It is not necessary to argue at length that an agency of the Federal Government, created by it for its own purposes, may be regulated by it. This principle was fully established in the great case of *McCulloch vs. The State of Maryland*, 4 Wheaton, 316. The doctrines there expounded in the powerful opinion of Chief-Justice Marshall have passed into the elementary principles of constitutional law, and are too familiar to need repetition here. Everything which was then said of the bank as an agency of the General Government may be here said of the railroad company in its character as such.

Passing from the Federal to the State corporations, it will be observed that the same duties, services, obligations, and liabilities which

are imposed by the act upon the former are exacted of the latter, without distinction, difference, or diminution. Each is to do for the Government what the other does ; each is liable to the same restrictions, and even to the same forfeitures as the others. Mr. Justice Strong says, in Peniston's case, already cited :

No difference can be pointed out between the nature, extent, and purposes of the agency of the several State corporations authorized to build the branch roads and the agency of the Union Pacific Railroad Company.

So, too, the State corporations received from the Government the same aid in land and bonds, and are clothed with the same powers and rights as the Federal corporation. In these respects also they stand on a footing of perfect equality with the Union Pacific Company. These grants by Congress to them of subsidies and franchises were to enable them to discharge the duties imposed upon them. They all accepted these grants with these duties and conditions annexed. The grants form the consideration for their stipulation to perform their duties. The Government, which is the party paying the consideration, reserves to itself the power of compelling the performance of these duties by the agents which it has created for the purpose. These several railroad companies, State and Federal alike, thus appear to be agencies of the Federal Government, and by reason of their character as such they are the legitimate subjects of its regulation and control. And in the case of the Federal corporations, the absolute right of regulation and control is reserved in the acts of incorporation. The bill is not therefore obnoxious to objection because it assumes such jurisdiction over them.

EXPLANATION OF THE BILL.

The first section of the bill appoints three citizens, of national reputation, and their successors, to be a Board of Commissioners, to hold their office for three years ; their successors are to be appointed by the President of the United States, with the advice and consent of the Senate, and any vacancy in their number is to be filled in like manner. One must be skilled in law and the other in railroad management.

Section 2 provides that the Board of Commissioners shall have general supervision of the roads named in it, and such others as shall receive Congressional aid. The board is to have an official seal and clerk. No one of them shall be in the employ of any of the companies or have any connection whatever with them.

Section 3 imposes upon them the duty of informing themselves of the condition of the roads, and the manner of operating them, and particularly whether they furnish to the public and the Government proper accommodations, at reasonable rates, and accomplish the purposes for which they were established.

Section 4 provides that they shall establish rules and regulations to govern the operation and management of the roads so as to afford and secure to the public and the Government all the advantages of intercommunication, travel, and transportation stipulated for in the acts, and to secure and enforce the reciprocal rights and duties of the companies. These rules and regulations are to be operative until revised, altered or annulled by the commissioners or the courts.

Section 5 provides that in case of dispute between the companies as to their mutual rights and duties, or any company or individual shall have cause of complaint against either of them, the commissioners may hear and determine the matter.

Section 6 provides that when it appears to the commissioners that one of the companies is failing to accomplish the purposes of its creation they shall make rules, regulations, directions, and orders in respect of the matter in which it is delinquent not inconsistent with the provisions of the acts, nor so as to impair the ability of the company to meet the payments due by it to the Government.

Section 7 provides that upon the refusal of any one of the companies to comply with any rule or order of the commissioners, any party aggrieved thereby, or the commissioners, may exhibit his bill in the United States circuit court to compel obedience, and provision is made for bringing the cause to a speedy determination.

Section 8 requires the companies to furnish the commissioners with any information which they may need.

Section 9 provides for annual reports to be made to Congress.

Section 10 fixes the salaries of the commissioners and clerk, and provides for the payment thereof and the incidental expenses of the commission, payment of which is to be made from a fund raised by assessments of the companies, to be made for the purpose.

Section 11 preserves unimpaired the duties and obligations now imposed by law upon the companies.

CONCLUSION.

I have represented these railroads as they are traced upon the map of the western territory, that their number and magnitude and the importance of the question affecting their management may be apparent at a glance.

I have reviewed the legislation of Congress regarding them, to recall the wise and harmonious plan of their organization, by which they are united in peculiar relations for their own and the public welfare and the careful supervision and authority of Congress preserved over all.

I have argued that the roads existing under State charters, adopted

and subsidized by Congress as its agents for the performance of great public duties, having accepted the duty and the bounty, are subject to the obligations and liabilities imposed by the legislation establishing the agency and granting the bounty, and are, therefore, in this respect equally amenable to the action of Congress as roads chartered by itself.

I have stated some of the questions out of which controversy has arisen in the management of these roads, that their delicacy and difficulty of solution may be manifest.

I have endeavored to show that the conditions and relations of railroads are too manifold and fluctuating to be controlled by any fixed and inexorable system of rules and regulations established by legislation or the adjudication of courts, and that the difficulties in this respect as to these roads is greatly increased by the peculiar features of the several systems into which they were organized.

I have claimed that Congress can efficiently exercise its authority and supervision over these roads, secure to them their natural rights, and to the public the advantages to which it is entitled from them only by the active and authoritative supervision of an able, impartial, and judicious board of commissioners.

A similar conclusion has been reached by other governments whose actions are entitled to our highest respect, and the establishment of such commissions under their jurisdiction has been followed by most satisfactory results.

I have briefly stated the provisions of the bill reported by the committee, and have defended it, it seems to me, successfully against criticisms of the usurpation of legislative and judicial functions alleged against it upon, I presume, cursory and superficial examination.

And I believe that the bill is legal and constitutional in all its provisions; and that it provides the only practicable scheme by which Congress can control these corporations, peculiarly subject to its authority, and further, that only thus it can ultimately exercise its constitutional authority to regulate interstate commerce.

I have been somewhat amused, Mr. Speaker, at the evidences of alarm and apprehension exhibited by some of my colleagues on the committee in their minority report on this bill. To their startled imaginations the bill of the majority is "a Draconian device." It seeks to transplant into the national "Eden" a "sprout of monarchy set in the soil of Massachusetts," which, for some unexplained reason, "has thus far flourished under the shadow of Bunker Hill." It provides "a triumvirate vested with legislative, judicial, and executive power." It creates "a monstrosity." "Its principles fully carried out will create a holocaust of our civil liberties."

I trust that my friends will soon recover sufficiently their equanimity and self-possession to consider intelligently the dangers which threaten us from an opposite direction to that in which their faces are now turned.

These corporations have disregarded the obligations imposed upon them. They have sought to break the bonds by which they were united in a beneficent system for the public good.

They have extorted tribute not only from the Territories through which they pass, but from the Government itself which created and endowed them.

At the outset they wasted the vast bounty conferred upon them in fraud and corruption, and their management since has too often been characterized by anything but a desire to promote the public welfare.

I could imagine, if I would, a vast monopoly, throwing its iron bands across the continent, fettering to itself by its branches on the one side the States and Territories of the North and Northwest, and on the other those of the South and Southwest, absorbing into one the three lines of transcontinental communication, wisely planned in the beginning, and still required for the prosperous development of the vast empire beyond the great rivers—a monster like Frankenstein's, unnatural, insatiate, powerful; vexing, defying, and finally destroying its creator, and then perishing itself, the victim of its own crimes and excesses. But I prefer to rely upon the wisdom and power of Congress, and to believe that it will exercise its authority justly, but effectively; that it will apply a remedy potent for good; that it will restore these roads to their original purpose, and make them instrumentalities of the highest good to the whole country.

Conquerors have torn down cities, to rebuild them upon a plan of greater order and magnificence; they have destroyed nationalities, that they might construct new empires upon the ruins. It has fallen to the lot of this people to rear a new empire upon a fresh and unbroken soil; but civilization reached the great rivers of the West before it fully realized the vastness and the majesty of the mission before it. There is yet time and opportunity for thought and consideration that this imperial domain be opened to settlement in accordance with some wise and premeditated system, that the arches of the new empire be reared in order and method, so that they shall not need to be removed, so that they shall not crumble, but shall remain the fixed foundations of a free civilization, whose influence and shelter shall be world-wide.

Mr. Speaker, I believe that this commission, wisely framed and properly sustained, will be a powerful instrumentality in accomplishing this result, desired, I am sure, by us all. As such I invoke for it the consideration and support of the Representatives of the people.

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